

ANNUAL REPORT
OF THE
REGULATORY FLEXIBILITY COMMITTEE



Indiana Legislative Services Agency
200 W. Washington Street, Suite 301
Indianapolis, Indiana 46204

November, 2013

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2013

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REGULATORY FLEXIBILITY COMMITTEE

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I. STATUTORY DIRECTIVE

Under IC 8-1-2.6-4, the Regulatory Flexibility Committee is required to monitor competition in the telecommunications industry. In addition to reviewing an annual report on the industry prepared by the Indiana Utility Regulatory Commission (IURC), the Committee is required to review the following issues:

- (1) The effects of competition and technological change in the telecommunications industry and the impact of competition on universal service.
- (2) The status of modernization of the publicly available telecommunications infrastructure in Indiana and the incentives required to further enhance the infrastructure.
- (3) The effects of modernization of telecommunications infrastructure on economic development and educational opportunities.
- (4) The current methods of regulating providers, at both the federal and state levels, and the effectiveness of the methods.
- (5) The economic and social effectiveness of current telecommunications service pricing.
- (6) All other telecommunications issues the Committee considers appropriate.

Under IC 8-1-2.5-9, the Committee is also required to monitor changes and competition in the energy utility industry. In addition to reviewing an annual report on the industry prepared by the IURC, the Committee is required to review the following issues:

- (1) The effects of competition or changes in the energy industry and the impact on residential rates.
- (2) The status of modernization of energy utility facilities in Indiana and the incentives required to further enhance this infrastructure.
- (3) The effects of modernization of energy utility facilities in Indiana on economic development.
- (4) The traditional method of regulating energy utilities and the method's effectiveness.
- (5) The economic and social effectiveness of traditional energy utility service pricing.
- (6) The effects of legislation enacted by the United States Congress.
- (7) All other energy utility issues the Committee considers appropriate.

II. SUMMARY OF WORK PROGRAM

The Committee met three times during the 2013 interim session: on September 4, September 18, and September 30.

The meeting on September 4, 2013, featured the following:

- Chairman James Atterholt of the IURC presented the agency's annual reports on the electricity and natural gas industries.
- Commissioner Carolene Mays of the IURC presented the agency's annual reports on the water and wastewater industries. Commissioner Mays also reported on the water resource data provided by Indiana water utilities for the 2012 calendar year, as required by SEA 132-2012. The IURC's water resource report was followed by further testimony

on Indiana's existing and needed water resources by Jack Wittman, Ph.D., John Hardwick of the Indiana Section of the American Waterworks Association, and Vince Griffin of the Indiana Chamber of Commerce.

- Commissioner Larry Landis of the IURC provided data concerning video service franchise fees collected and spent by local units in 2012, as required by HEA 1280-2012. In addition to receiving Commissioner Landis' report, the Committee also heard testimony on the issue of video service franchise fees from John Ruckelhaus and Todd A. Lard, on behalf of the Indiana Cable Telecommunications Association, and from Damon Stewart, on behalf of DIRECTV.

- Doug Gotham, Director of the State Utility Forecasting Group (SUGF), delivered the SUGF's annual report on renewable energy resources in Indiana and previewed its 2013 biennial electricity forecast for the state.

The meeting on September 18, 2013, included the following:

- Counselor A. David Stippler reported on the recent activities of the Office of Utility Consumer Counselor (OUCC) in representing Indiana utility consumers.

- Commissioner Carolene Mays of the IURC testified about protecting the electric grid and other critical infrastructure from cyberattacks.

- Tim Caister of Northern Indiana Public Service Company (NIPSCO) and John Haselden of Indianapolis Power & Light (IPL) discussed their respective companies' feed-in tariff (FIT) pilot programs for customers who generate electricity through their own renewable energy facilities. Laura Arnold, President of the Indiana Distributed Energy Alliance, testified on behalf of customers and developers who have participated in the FIT programs offered by NIPSCO and IPL.

- The Committee heard testimony on the subject of customer choice, deregulation, and competitive procurement in the energy industry. Kenneth Rose, Ph.D., Senior Fellow with the Institute of Public Utilities at Michigan State University, compared states that have restructured the regulation of retail electric service, versus states that continue to use a traditional regulatory model, and concluded that there is no clear benefit to customers from retail rate restructuring at this time. Dr. Rose's testimony was followed by testimony from the following, all of whom argued for reforming Indiana's retail electric regulatory structure in some way: Jennifer Terry of Indiana Industrial Energy Consumers, Inc. (INDIEC); Philip O'Connor, Ph.D.; Chris Olsen of Tate & Lyle; Joe Clark of Direct Energy Services, LLC; Jason Minalga of Invenergy, LLC; and Joe Kerecman of Calpine Corporation. Jodi Perras of the Sierra Club Hoosier Chapter argued that Indiana's regulatory policies should encourage the use of distributed renewable generation to provide competitive business opportunities in the state and to protect ratepayers from bearing the costs of utility-built facilities. Kerwin Olson of the Citizens Action Coalition argued against customer choice programs for retail electric and natural gas service, citing the programs' higher costs for customers, particularly low-income customers.

At the meeting on September 30, 2013, the following occurred:

- Commissioner Larry Landis of the IURC presented the agency's annual communications industry report, which included a discussion of area code relief in southern Indiana, statewide direct marketing for video service providers, universal service reform, reforms to the Lifeline program for low-income consumers, and rural call completion. Commissioner Landis also remarked on the transition to Internet protocol (IP) technology in the communications industry, a topic which Steve Rogers of AT&T addressed later in the meeting to describe his company's ongoing investments in the new technology.
- Terry Tolliver, Deputy Director of the Consumer Affairs Division in the Office of the Attorney General (OAG), provided an update on the OAG's investigation of a breach of customer data by TerraCom Inc., a provider of wireless service to Lifeline customers.
- Kurt Youngs, President of the Indiana chapter of the National Utility Contractors Association, and Paul Fallon, President of HRP Construction Inc. of South Bend, described the safety concerns of contractors who encounter underground utility facilities when performing excavations. They urged legislators to amend Indiana's 811 statute, which governs the system through which excavators call to request that the location of underground utility facilities be marked by utility companies before the excavation begins. Representative Dan Niezgodski, who introduced legislation to amend the statute in 2013, addressed the Committee to explain that his continuing efforts to amend the law are motivated by the desire to ensure the safety of both contractors and the public. Dan Meiners, Executive Director of Indiana 811, the nonprofit corporation that operates Indiana's 811 system, discussed revisions to the 811 law that the General Assembly enacted in 2003 and 2009 in an effort to improve the locating process. He testified that damages to underground facilities from excavation work have been reduced as a result of these statutory changes.
- Commissioner Kari Bennett of the IURC discussed the Federal Energy Regulatory Commission's (FERC) Order 1000, which was issued in 2011 to address transmission planning and cost allocation by public utilities. She testified that the General Assembly adopted "reasonable and balanced" legislation to address the issues raised by Order 1000 when it enacted SEA 94-2013, which establishes a certification process for new electric transmission owners and allows incumbent transmission owners a right of first refusal to construct new transmission facilities in certain circumstances.
- Michael Whatley, an adviser to the Babcock & Wilcox Company, discussed small modular reactors (SMRs), which are part of a new generation of nuclear power plant designs. Mr. Whatley urged legislators to consider SMRs as an option to replace Indiana's aging coal-fired power plants. Representative Terri Austin addressed the Committee to urge members to consider SMRs as an option when planning for Indiana's energy needs. Grant Smith of the Sierra Club Hoosier Chapter urged lawmakers to use caution in considering nuclear power as a source of energy for Indiana.

The Committee issued no formal recommendations concerning any of the topics it considered during the interim.

Meeting minutes for the Committee can be accessed from the General Assembly Homepage at <http://www.in.gov/legislative/>.